



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,126	12/19/2001	Hans-Werner Heinrich	101195-63	6139

7590 09/07/2004
Bruce S Londa
Norris McLaughlin & Marcus
30th Floor
220 East 42nd Street
New York, NY 10017

EXAMINER

SAUNDERS, DAVID A

ART UNIT

PAPER NUMBER

1644

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/937,126

Applicant(s)

HEINRICH ET AL.

Examiner

David A Saunders, PhD

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 02 August 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☒ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment re claim 11.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☒ Newly proposed or amended claim(s) 12-15 and 28 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment re claims 22-27.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1-3.

Claim(s) objected to: _____.

Claim(s) rejected: 4-15 and 18-21.

Claim(s) withdrawn from consideration: 22-27

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.

10. ☒ Other:

SEE ATTACHMENT CONCERNING CLAIMS 1, 4-5 AND 18.

Art Unit: 1644

Entry of the amendment would require further considerations of new matter. In claim 11 applicant inserted "polymers further comprise" and "one or more of the group consisting of". Recitations of "further comprise" and of "one or more" would need to be considered for new matter. These changes were not made in response to any rejection made by the examiner; thus there is no reason for the examiner to consider this after FINAL.

Claims 22-27 will not be examined and MUST be cancelled in any future response. They lack support, not because of the alternative recitation of antibodies to C3a or C5a, but because of the failure to also include antibodies to LPS. Applicant has absolutely no support for the subcombination now claimed.

Cancellation of claims 6 and 20-21; the amendments to claims 4, 7-10, 12-15 and 19; and the addition of claim 28 would be enterable.

For Claim 1, it is suggested applicant insert --are specific for-- in lieu of "bind" at line 3, and insert --for-- in lieu of "to" at line 3, in order to provide antecedent bases for "specific for" in parts a) and b)

In claim 4, it is suggested that applicant change the dependency from "1" to --5-- , since claim 5 is the first to recite "sepsis mediator".

In Claim 5, it is suggested applicant insert --at least one immobilized antibody-- instead of "at least one antibody" at line 2, and --specific for-- instead of "directed against" at line 2.

For claim 18, penultimate line, it is suggested that applicant recite --contacted-- instead of "treated".

Any inquiry concerning this communication should be directed to David A Saunders, PhD at telephone number 571-272-0849.

David A Saunders
DAVID SAUNDERS
PRIMARY EXAMINER
ART UNIT 182 / 644